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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Application of BellSouth Corporation,
BellSouth Telecommunications, Inc.
and BellSouth Long Distance, Inc.
for Provision of In-Region, InterLATA
Services in South Carolina

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CC Docket No. 97-208

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Exhibit B:
Declaration of Marcel Henry
on Behalf of MCI Telecommunications Corporation

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)	
)	
Application of BellSouth Communications,)	
Inc., Pursuant to Section 271 of the)	CC Docket No. 97-208
Communications Act of 1934, as amended,)	
to Provide In-region, InterLATA Services)	
in South Carolina)	

**DECLARATION OF MARCEL HENRY
on Behalf of MCI Telecommunications Corporation**

Based on my personal knowledge and on information learned in the course of my business duties, I, Marcel Henry, declare as follows:

1. I am Vice President - Southern Financial Operations at MCI Telecommunications Corporation, as well as Vice President of MCImetro Access Transmission Services, MCI's local subsidiary. In these positions, which I have held since December 1996, I oversee MCI's Carrier Management for BellSouth, Sprint/United, and independent telephone companies operating in nineteen states; interconnection contract negotiations; Systems Implementation for the ordering, provisioning, and billing for local telephone service; Network/City Planning for local service; Bill Payment and Auditing for access purchased from incumbent local exchange companies and competitive access providers; and Resale and Sales Agency negotiations for wireless service.

2. Before joining MCI, I worked for fifteen years at Pacific Bell in San Francisco, where I held positions as Vice President - Lead Negotiator for interconnection agreements, Vice President of the Sprint Division, and Director - National Accounts. I also have held several other sales and marketing positions. I received a degree in Information Systems Management from the University of San Francisco, and I am a graduate of the Harvard Business School Program for Management Development.

3. This declaration has two primary purposes. First, I will describe the efforts that MCI has undertaken so far in order to enter the local telephone exchange markets throughout the country, and the importance of interconnection, unbundled network elements, and resale to those efforts. Second, in the bulk of this declaration I will explain how BellSouth's Statement of Generally Available Terms and Conditions ("SGAT") for South Carolina falls short of truly offering all of the items listed in the competitive checklist that is set forth in Section 271(c)(2)(B) of the Telecommunications Act of 1996 ("Act"). In that regard, I address whether the SGAT offers every required checklist item and whether the checklist items are offered -- and are actually available -- on terms and conditions that comply with the Act. It is my opinion that BellSouth's SGAT clearly does not offer all of the checklist items in a manner that is fully consistent with the requirements of the Act.

MCI'S EFFORTS TO ENTER THE LOCAL MARKETS

4. The promise of the Act is to bring consumers the benefits of competition in local phone markets -- lower prices, higher service quality, and greater choices. The local marketplace is vital to the future of MCI, and MCI is absolutely committed to breaking open the

local phone market. Our incentive to get into local service is one of overriding competitive necessity. Simply put, there is no way MCI can pass up the opportunity to offer more and better services to all of our nearly 20 million existing long-distance customers and to the new customers that MCI must attract and keep to survive and grow in the competitive telecommunications business. Moreover, many of our business and residential customers are demanding fully integrated communications services, and, of course, all of them want the chance for real savings on their telephone bills.

5. In order to be competitive, therefore, MCI must be able to fulfill all of its customers' telecommunications needs including local, long-distance, cellular, paging, toll-free services, and Internet access. The ability to provide a competitive local service is vital to MCI's becoming a fully integrated telecommunications provider. Our experience has been that business and residential customers who purchase more than one telecommunications service from MCI are much less likely to switch providers than, for example, a customer who subscribes solely to MCI's basic long-distance service. In addition, consumers changed long-distance companies an estimated 50 million times last year alone. This fact underscores the competitiveness of the long-distance market, but it also poses a challenge to MCI, which not only wants to win new customers but also wants to keep those customers it has satisfied over the long term. Moreover, entering the

6. In addition, the local phone market presents MCI with a huge business opportunity. Until now, this market has been the province of incumbent monopoly service providers, primarily the Regional Bell Operating Companies ("BOCs"). How large is the market for local service? Almost double that for long-distance service. In 1996, the total revenue from long-distance service (net of access charges paid to incumbents) was approximately \$50 billion, while total local service revenue was just under \$96 billion. That figure included approximately \$56 billion in local service revenue, \$29 billion in access revenue, and \$11 billion in intraLATA revenue. The size and profitability of the local marketplace provide a compelling competitive opportunity for MCI. Indeed, many of our long distance business customers tell us they will switch to MCI local service as soon as it is available. Being competitive in this market will bring tremendous benefit not only to consumers but also to MCI and its shareholders.

7. MCI has an additional direct and immediate financial incentive to enter local markets. By providing local service ourselves, we will be able to avoid the exorbitant access charges imposed upon us by the current monopoly providers. Even if we do not provide alternative local service to our long-distance customers, effective competition in access services will force the BOCs to lower access charges for their access customers. The ability to reduce its access costs doubly benefits MCI, because the current access regime both greatly increases our costs of doing business and provides the incumbent monopoly BOCs with huge war chests with which to compete against us. MCI will also be able to improve reliability in its services by reducing its dependence on the local exchange carriers for access services.

8. The importance of the local market to MCI is demonstrated by MCI's level of commitment to providing competitive local service across the country. MCI has spent over

\$2.5 billion on local markets so far. Capital investments constitute a large portion of those expenditures: \$1 billion through 1996, another \$700 million in 1997 alone, with a cumulative total of \$3 billion in capital expenditures planned by the end of 1998.

9. All this money is financing MCI's broad-based entry into local markets nationwide. MCI currently provides switched local service using its own facilities (including switches and local city networks) in 25 cities. MCI intends to be in 31 local markets by the end of 1997. By the end of 1998, MCI intends to offer local service in 54 local markets.

10. MCI will bring the benefits of increased competition to all segments of the market. As it does with long-distance services, MCI will pursue high-volume, high-revenue business customers. And also as it does with long-distance services, MCI will offer a broad array of competitively priced local services to residential customers. MCI is fully committed to entering the residential local market on a large scale. Providing residential service promotes and protects the identity of the MCI brand, which is one of our most important assets. It will also allow us to tap a reservoir of residential customers who may generate a relatively small amount of long-distance revenue but who extensively use other telecommunications services, such as Internet access. Moreover, as I discussed above, we are in danger of losing existing customers if we do not offer a competitive local residential service. We also need to retain and expand our residential base in order to utilize our network efficiently and to keep our costs low.

11. MCI knows what its customers want, and has extensive experience in meeting those needs. Our early entry into the local market has allowed MCI to refine the types of services we intend to provide. In those localities where MCI competes, MCI will offer a full-service line of telecommunications products. We will provide a host of advanced, value-added

services, such as ISDN, voice messaging, and enhanced centrex. MCI also will provide customized reporting and consolidated billing for local and long-distance services. Having a single point of contact for all telecommunications sales and services will facilitate the expansion of consumer choice.

12. In order to implement its aggressive local business plan, MCI must and will use all methods of providing local service: resale of incumbent services, purchasing unbundled network elements from the incumbents, using MCI's own facilities, and entering into ventures with other companies to construct or utilize facilities. Different markets will call for different ways of providing service, but, in order to be competitive, MCI must be able to rely on every method being available to it. In particular, MCI intends to compete in BellSouth's region using each method of entry, and MCI notified BellSouth of these plans in January 1997. See Attach. 1 (Letter from Marcel Henry, MCI, to Mark Feidler, BellSouth (Jan. 27, 1997)). MCI has testified before the the South Carolina Public Service Commission that it intends to compete in South Carolina using every entry method. See Attach. 1A (Testimony of Greg Darnell before the Public Service Commission of South Carolina, Docket No. 97-115-C, at 3).

13. In the case of resale and unbundled network elements, MCI is wholly dependent on the BOCs to provide us with what we need at prices consistent with the law. As competition progresses, however, MCI need not and will not be as tied to BOC service offerings and facilities. MCI intends to provide local telecommunications services to both business and residential customers predominantly through its own switches and other facilities. Where it is more efficient to do so, MCI will utilize unbundled local loops and collocations at BOC facilities to connect its customers to MCI's switches. This approach allows MCI to differentiate its

products and services, as most advanced features and customized applications are provided through software resident in switches or in providers' own external databases. The more it builds, operates, and upgrades its own network, the less dependent MCI will be on outside factors and third parties. Providing local service through its own switches and external databases will maximize value for MCI's shareholders over time.

14. Access to unbundled network elements at cost-based prices is critical to MCI's local business plan for another reason. The Commission has concluded that the BOCs should not impose inflated access charges on access obtained using unbundled network elements, and indeed the Commission is counting on the availability of these elements at cost-based prices to achieve the goal of reducing access charges to cost. Consistent with the Commission's hopes and expectations, MCI intends to utilize unbundled network elements to provide customers with more economical access services. MCI will avoid overpriced access when it uses its own facilities, but during the necessarily long process of building out its own network, the ability to lease network elements at cost-based rates in a variety of combinations will significantly facilitate MCI's market entry and MCI's ability to put competitive pressure on the BOCs. For all of these reasons, it is critical that BellSouth and the other BOCs make all items on the Act's competitive checklist available on reasonable and nondiscriminatory terms and conditions.

15. MCI fully intends to compete using all entry means in all states in BellSouth's region. In South Carolina, MCI has submitted limited test orders, including six residential resale orders and thirteen residential UNE combination orders. The timing of additional activity in South Carolina will depend on whether BellSouth begins to comply fully with the Act. In Georgia, MCI is testing the systems that BellSouth plans to use region-wide in

order to determine whether BellSouth truly can provide what the Act requires. Today, BellSouth is not even close to doing so, for the reasons that I explain below and that are explained in the declaration of Samuel King. Particularly given MCI's experience in California, where PacBell turned out to be unable to support MCI's resale efforts, it would be imprudent for MCI to take additional steps toward providing facilities-based service when BellSouth has not put in place the systems needed to allow a commercial launch to succeed. Only when BellSouth has complied with the Act fully in Georgia will it make sense for MCI to expand into the other states in BellSouth's region. As I explain in greater detail below, there are many defects in BellSouth's compliance with the Act that effectively foreclose additional investment in the BellSouth region at this time.

DEFICIENCIES IN BELL SOUTH'S SGAT

16. The critical shortcoming in BellSouth's SGAT, and in the affidavits of Alphonso Varner and Keith Milner in support of the SGAT, is the absence of operational detail showing that BellSouth's local competitors can actually obtain all of the checklist items on terms and conditions that comply with the Act. To truly "offer" the items required by the checklist, BellSouth must do more than simply state in its SGAT that it will provide each item in compliance with the Act and the FCC's orders. It must demonstrate that it can actually provide those items in the real world, and that it can do so in commercial quantities, using reliable business procedures, at a level of performance that is both reasonable and nondiscriminatory. In my judgment, BellSouth has not made this showing.

17. The best way for BellSouth to show that it can deliver on the promises made in its SGAT would be to point to actual experience providing checklist items. However, BellSouth has limited experience providing unbundled network elements and most other items required by the checklist. Moreover, the simple fact that BellSouth has provided an item is not sufficient to prove that BellSouth has made the item available as required by the Act. For example, the fact that BellSouth has completed fourteen physical collocations in its nine-state region, see Affidavit of W. Keith Milner ¶ 20, BellSouth App. A, Vol. 3, Tab 9 [hereinafter “Milner Aff.”], is not enough to support the conclusion that BellSouth can provide physical collocation on terms and conditions that comply with the Act. To reach that conclusion, one would have to know such details as how quickly BellSouth provided the collocation, what BellSouth charged for preparation of the collocation space, and whether the collocation has been implemented in a reasonable and nondiscriminatory manner.¹ BellSouth generally does not provide such information in its application.

18. Another, far less reliable, way for BellSouth to show that it truly offers the checklist items recited in its SGAT would be to prove through exhaustive testing with CLECs that competitors can order, and that BellSouth can deliver, the various items. BellSouth, particularly in the affidavit of Keith Milner, states that it has performed some testing for several

¹For example, MGC Communications testified before the Georgia Public Service Commission that BellSouth has insisted that MGC pay for a fully-walled enclosure for its collocation space, rather than a wire cage that would provide adequate security. See Attach. 2 (Prefiled Testimony of Michael D. English on Behalf of MGC Communications, Inc., Georgia Public Service Commission Docket No. 7061-U (Sept. 5, 1997). A fully-walled enclosure is significantly more costly than a wire cage. Unnecessarily driving up the cost in this manner is just one way in which BellSouth’s provision of collocation can fail to comply with the Act’s requirements of reasonableness and nondiscrimination.

checklist items. However, Mr. Milner says very little about how the tests were conducted, when they were conducted, or under what circumstances. In addition, these tests appear to have all been internal to BellSouth, not involving any other carrier. Joint testing with another carrier is important to ensure that the entire process is sound and reliable in a commercial environment. BellSouth has not established here that it can provide all checklist items in a commercial setting in a manner that conforms with the Act.

19. The upshot of either actual experience or comprehensive testing would be standard implementation procedures that competitive local exchange carriers (“CLECs”) can rely on when seeking to obtain checklist items from BellSouth. As is apparent from the SGAT and the affidavits of Mr. Varner and Mr. Milner, BellSouth has not yet developed such procedures. For example, the SGAT contains no installation intervals, or (with very few exceptions) any form of performance standards, for any checklist item. Thus, the SGAT tells competitive local exchange carriers that they can order unbundled loops, but does not promise delivery within a specified period of time, let alone offer enforcement mechanisms for failure to meet required intervals. As I discuss below in the section on unbundled loops, the installation interval is critical to the viability of competition via unbundled loops. BellSouth cannot be found to offer loops in compliance with the Act unless that offering includes nondiscriminatory, enforceable installation intervals. The same can be said of all other checklist items: reliable procedures, nondiscriminatory business rules, and enforceable standards are needed in order for the various items to truly be offered as the Act requires.

20. With very limited exceptions (access to LIDB database), BellSouth has refused in its negotiations with MCI to commit to performance standards covering any checklist

requirements. Nor has BellSouth been willing to agree to any self-executing remedies in connection with performance standards. BellSouth does not offer enforceable performance standards for any of the critical functions of pre-ordering, ordering, provisioning, maintenance and repair, or billing. Without enforceable performance standards, MCI does not know the quality and timeliness of service it can expect to receive from BellSouth, has no way of holding BellSouth to a specified level of service, and cannot even advise our own prospective or existing customers what level of service MCI can commit to.

21. The lack of standard implementation procedures is also highlighted by the SGAT's repeated invocation of BellSouth's Bona Fide Request ("BFR") process. The BFR process is a non-standard ordering process that allows BellSouth up to 90 days just to give the CLEC a quote stating the price and terms on which it will provide the requested item. The process does not involve any commitment by BellSouth to provide the item, much less to provide it within any specified period. This is not an acceptable procedure for providing standard unbundled network elements, for example. BellSouth does not follow this protracted procedure when it develops new capabilities and services for itself, and requiring competitors to go through this slow and arbitrary procedure is discriminatory as well as unreasonable. In addition, many terms and conditions associated with provision of checklist items must be negotiated by the CLEC with BellSouth on a case-by-case basis. Through these and other business rules, BellSouth erects a variety of roadblocks and speedbumps that impede the CLEC's access to checklist items, even as it states in its SGAT that those items are available.

22. In sum, reciting on paper some of the requirements of the Act is not the same as offering all of the required items.² Each item must truly be available. And having provided an item some number of times is not itself proof that the item is available as required by the Act. The terms and conditions on which the item was provided are critically relevant. BellSouth must show that it can provide each item reliably, in commercial quantities, on terms that are reasonable and nondiscriminatory. BellSouth has failed to show this in its SGAT and supporting affidavits.³

INTERCONNECTION (Checklist Item (i))

23. MCI and other new entrants into local markets plan to interconnect with BellSouth using collocation, both physical and virtual. A CLEC is not efficiently interconnected with BellSouth if it cannot collocate on fair and nondiscriminatory terms and conditions. Therefore, BellSouth has not met its duty to offer interconnection until it has made collocation operationally available through its SGAT.

24. The collocation offerings contained in BellSouth's SGAT are deficient on their face. No implementational and performance-related details are included in the SGAT;

²Paper promises also can be broken. In 1995, MCI and BellSouth entered an agreement by which BellSouth would lower access charges in Tennessee according to a specified schedule if the Tennessee legislature authorized price cap regulation for BellSouth. The legislature subsequently authorized price cap regulation, but BellSouth refused to file for a tariff reduction as required by its contract with MCI.

³In addition, BellSouth cannot argue that any defects in its SGAT can be cured by CLECs' reliance on provisions from agreements that BellSouth has entered with other CLECs. BellSouth has stated that it will permit CLECs to "pick-and-choose" entire agreements, but not particular provisions of agreements.

instead, they are contained in a separate handbook. See SGAT §§ I.C., II.B.6.; Milner Aff. ¶ 15. This handbook is not subject to approval, and was not approved, by the South Carolina Public Service Commission, and BellSouth may amend it unilaterally at any time. In addition, the handbook lacks critical procedural provisions, such as intervals for completion of the collocation. As BellSouth recognizes in Mr. Milner's affidavit, critical terms such as implementation intervals still have to be worked out between the CLEC and BellSouth in negotiations. See Milner Aff. ¶ 23; Affidavit of Alphonso J. Varner [hereinafter "Varner Aff."], at Ex. AJV-4 (BellSouth Telecommunications Negotiations Handbook for Collocation, at 4), BellSouth App. A, Vol. 5, Tab 14. The handbook also leaves the cost of space preparation to be negotiated on a case by case basis, see Varner Aff. ¶ 61, which the Georgia Public Service Commission's Advocate Staff found to be "an obstacle to competition because it introduces unnecessary uncertainty into the process of obtaining physical collocation." Exhibit 3 (Brief and Proposed Order of the Advocate Staff, Georgia Public Service Commission Docket No. 7061-U, at 58 (Oct. 1, 1997)). For these reasons, the collocation handbook cannot satisfy the requirement that the SGAT offer collocation on terms and conditions that comply with the Act.

25. Moreover, it is far from clear that BellSouth can actually provide, within reasonable timeframes, the collocation that it describes in its handbook. As of August 31, 1997, BellSouth has completed only five CLEC virtual collocations in South Carolina. See Milner Aff. ¶ 26. BellSouth has not completed a single physical collocation in South Carolina, and it has completed only fourteen in its entire nine-state region. See Milner Aff. ¶ 20. BellSouth says nothing about whether these collocations were established in a timely fashion or according to reasonable and nondiscriminatory procedures. Yet, simply because it has completed some number

of virtual and physical collocations, BellSouth determined that no end-to-end testing of its collocation arrangements is necessary to prove that it can provide collocation in a manner that complies with the Act. See Milner ¶ 23. In sum, BellSouth has not shown through sufficient experience or testing that CLECs can depend on well-established procedures and intervals for the provision of collocation.

26. To satisfy its duty to provide interconnection, BellSouth must also permit interconnection at any technically feasible point. 47 U.S.C. § 251(c)(2). However, the SGAT does not offer interconnection via a meet point arrangement on a standardized basis including reasonable and nondiscriminatory terms. If a CLEC wishes to interconnect with a mid-span meet, it must use the BFR process. See SGAT § I.A.2.; Varner Aff. ¶ 52.⁴ BellSouth states that it will provide “interconnection at all points and using all methods available,” Milner Aff. ¶ 12, but in practice it will provide interconnection at certain points and via certain methods only through the lengthy BFR process.

27. Moreover, BellSouth effectively prevents CLECs from interconnecting at its local tandem switches, although that is the point of interconnection for the exchange of local traffic between BellSouth and independent local telephone companies. On paper, BellSouth seems to allow interconnection at the local tandems, but in actuality it has not provided CLECs with the information CLECs need to interconnect there. CLECs cannot interconnect at the local tandems unless BellSouth publishes those switches’ identities and the NXX codes associated with

⁴Mr. Varner also suggests that a CLEC can interconnect at a BellSouth tandem switch only via the the BFR process. See Varner Aff. ¶ 46. This statement is ambiguous. It is my understanding that CLECs can interconnect at BellSouth’s access tandems without using a BFR; Mr. Varner might be referring to BellSouth’s local tandems, at which CLECs have so far been unable to interconnect.

the local switches that subtend them. BellSouth has not done so. Thus, while BellSouth's local traffic remains on a dedicated local network that does not utilize the access tandem, CLECs' local traffic is removed from the BellSouth local network and placed on the IXC toll network. This has the effect of enhancing BellSouth's local service, because BellSouth's local traffic does not have to share the local network with CLECs' local traffic. And that enhancement of BellSouth's service comes at the expense of both IXC long-distance traffic and CLEC local traffic as the risk of blockage on the IXC network is increased.

28. There are other shortcomings in the SGAT's interconnection offering. For example, BellSouth's offering is inconsistent with the Act because it provides only for a one-way trunk group to carry local and intraLATA traffic between BellSouth's switch and the CLEC's network. See SGAT § I.D.; Varner Aff. ¶ 47. Because two-way trunking avoids the need to install an additional trunk group, it is more efficient and less costly, and it would therefore allow CLECs to bring competition to the local market more quickly and effectively. However, BellSouth limits the availability of two-way trunking to trunk groups carrying interLATA traffic. See SGAT § I.D.; Varner Aff. ¶ 47. There is no technical justification for this limitation, particularly because BOCs already use two-way trunking in their own networks and provide two-way trunking to independent LECs. If a CLEC wishes to use two-way trunking to exchange local traffic with BellSouth, it must request that through the deficient and discriminatory BFR process. See SGAT § I.D.

29. Also, there is no legitimate basis for BellSouth's statement in its SGAT that it will provide a CLEC with "intermediary" tandem switching and transport for calls terminating to a different CLEC's end user only when termination of such calls is "authorized."

SGAT § I.A.5. I understand this to mean that BellSouth has set itself up as a self-appointed regulator of interconnection, and will not terminate calls to another carrier's customer unless the originating CLEC has an interconnection agreement with the terminating carrier. BellSouth used precisely this strategy when it refused to complete MCI's customers' calls originating in Memphis, Tennessee to terminating numbers in West Memphis, Arkansas -- Southwestern Bell's territory -- because MCI did not yet have an interconnection agreement with Southwestern Bell in Arkansas. See Attach. 4 (correspondence between Mark Feidler, BellSouth, and Marcel Henry, MCI (Jan. 31, 1997 and Feb. 5, 1997)). BellSouth's duty is to complete the call, not to take upon itself the role of regulator and block those calls it finds not to be "authorized."

UNBUNDLED NETWORK ELEMENTS
(Checklist Item (ii))

30. The Act requires BellSouth to provide nondiscriminatory access to unbundled network elements at any technically feasible point. 47 U.S.C. § 251(c)(3). BellSouth's SGAT does not offer unbundled elements in accordance with these requirements. BellSouth's failure to offer unbundled loops, unbundled switching, and unbundled transport in accordance with the Act is discussed in separate sections of this affidavit because those elements are separate checklist items. In addition, however, BellSouth has failed to offer access to other network elements, particularly combinations of network elements, subloop elements, and dark fiber, in a manner that is consistent with the Act.

A. Combinations of elements

31. BellSouth's SGAT states that "CLECs may combine BellSouth network elements in any manner to provide telecommunications services." SGAT § II.F.; see Varner Aff.

¶ 74. Under any interpretation of the Act, including the interpretation recently provided by the Eighth Circuit, this statement standing alone does not satisfy BellSouth's checklist obligations. BellSouth must provide CLECs with access to the hardware and software that they need to combine elements efficiently. The SGAT gives no indication that BellSouth will do so. The SGAT says only that "BellSouth will physically deliver unbundled network elements where reasonably possible," and gives no explanation of what standards BellSouth might use to determine what is reasonable or any intervals for that determination or for delivery of elements. See SGAT § II.F.1. In particular, BellSouth makes no statements at all as to when, in its view, it is not "reasonably possible" to physically deliver the network elements. In this regard, the SGAT offers only the mysterious suggestion that any additional assistance from BellSouth will be available only on a negotiated basis. Id. As a practical matter, this is wholly inadequate. BellSouth may well claim that it is not "reasonably possible" to physically deliver most elements. Will BellSouth combine some elements at a CLEC's request? Will it do so free of charge, or at a cost-based rate? Or will it simply refuse to provide such elements in combination? As to all of this, the SGAT is silent. The SGAT cannot support the conclusion that BellSouth will allow CLECs to provide service through combinations of network elements as required by the competitive checklist, and it gives no indication of how it will provide these elements.

32. Finally, BellSouth gives no assurance that it will not stop providing network elements that it currently offers on the grounds that those elements are actually combinations of network elements. For example, BellSouth does not commit to providing unbundled loops as unbundled loops, without breaking them apart into loop feeder, loop concentration, loop distribution, and the NID. The SGAT's failure to address this issue in a

specific and enforceable way amounts to a failure to demonstrate full compliance with the requirements of the Act. I have great difficulty with the Eighth Circuit's understanding of the Act's combination requirement. But under that understanding, or this Commission's understanding, or any other understanding, BellSouth's SGAT cannot possibly be sufficient to prove that it makes available network elements to be combined.

B. Subloop elements

33. The subparts of the local loop -- loop feeder and loop distribution -- are network elements that must be unbundled at any technically feasible point at the request of a CLEC. There is no question that it is technically feasible for BellSouth to provide unbundled access to subloop elements at the feeder/distribution interface. BellSouth has not attempted to present any evidence demonstrating otherwise. However, BellSouth offers loop distribution only via the BFR process. See Varner Aff. ¶¶ 86, 88. This will create unreasonably delay in CLECs' access to a critical unbundled element.

34. Access to unbundled loop distribution is vitally important to CLECs that are building their networks into new areas. With such access, CLECs can connect their own feeder to the unbundled loop distribution, reducing their reliance on BellSouth-owned facilities and increasing facilities-based competition. For example, if a CLEC has a SONET ring running down a road past many customer premises, it is still extremely difficult, time-consuming, and expensive for the CLEC to negotiate entrance rights-of-way with property owners and to construct entrance facilities. The CLEC must negotiate with real estate companies, obtain rights-of-way and approvals to use risers and conduits, and obtain construction approval where construction is required, such as the many instances where risers -- the facilities that

accommodate lines running to individual offices or apartments -- are already full. Even when the CLEC eventually gains access to a building, it does not know whether it will regain its substantial investment in the local loop. However, if the CLEC can interconnect with BellSouth at the feeder/distribution interface and utilize BellSouth's loop distribution, it can maximize the use of its network and be in a position to compete fully. This is consistent with a central goal of the unbundling requirements -- affording new competitors the option of relying on their own facilities to the extent practicable and avoiding unnecessary dependence on ILEC facilities. BellSouth's offer of loop distribution only via the BFR process restricts the ability of CLECs to achieve this.

C. Dark fiber

35. Although BellSouth does offer dark fiber in its SGAT, see SGAT § II.B.7., it does not do so on standardized terms that are reasonable and nondiscriminatory. Instead, instead of providing firm intervals, the SGAT merely promises that "BellSouth shall use its best efforts" to provide a requesting CLEC with information about the location, availability, and performance of dark fiber within ten days if the information is available from records, and twenty days if the information must be obtained in the field. See SGAT, Attach. C, § 13.2.2. Then, "BellSouth shall use its best efforts" to make the requested dark fiber available to the CLEC within an additional thirty days from the CLEC's written confirmation that it wants to use the dark fiber. See SGAT, Attach. C, § 13.2.3. To truly offer dark fiber as required by the Act, the SGAT must do more than promise BellSouth's "best efforts." The SGAT must make real commitments on which CLECs can depend. As it stands, the SGAT allows BellSouth to take much longer than the forty-day minimum set forth there, and gives the CLEC no contractual remedy whatsoever. And, although BellSouth states in the Milner affidavit that it has

“successfully end-to-end tested its dark fiber procedures,” Milner Aff. ¶ 34, it does not describe either those procedures or the testing.

36. Dark fiber is fiber that has been deployed but that has not yet been “lit” by electronic equipment at either end -- in effect, it is simply excess transmission capacity. It is important for developing CLECs to be able to access BellSouth’s dark fiber in order to most efficiently and flexibly expand their facilities-based competitive presence by installing their own electronics that comport with their network architectures. Because network construction for the initial placement of fiber facilities is timely and costly, involving permits, road work, conduit placement, and more, telecommunications carriers typically install large quantities of fiber cables. BellSouth has dark fiber available where it has upgraded its facilities from copper plant, and should be required to provide plant records to detail where excess capacity exists. Without this network element, CLECs’ only choices are to undertake the timely and expensive construction effort needed to place their own fiber in the ground or to purchase the use of lit fiber transport services from BellSouth. BellSouth’s failure to offer dark fiber on standard, reliable terms and conditions needlessly hinders CLECs’ competitive expansion.

UNBUNDLED LOOPS (Checklist Item (iv))

37. The checklist expressly requires that ILECs provide unbundled access to local loops. 47 U.S.C. § 271(c)(2)(B)(iv). In addition, loops are network elements, which ILECs are required to provide on a reasonable and nondiscriminatory basis. 47 U.S.C. § 251(c)(3), 271(c)(2)(B)(ii). BellSouth’s SGAT does not make unbundled loops available in accordance with these requirements. Aside from the serious OSS problems that are discussed in the declaration of

Samuel King, the SGAT is deficient in that it does not include standard intervals within which it will provide unbundled loops. This is a critical shortcoming given BellSouth's obligation to provide loops to CLECs as rapidly as it provides service to its own end users. The SGAT simply does not commit BellSouth to doing so, let alone include enforcement mechanisms needed to hold BellSouth to specified intervals.

38. For this reason, the unbundled loop offering contained in BellSouth's SGAT does not meet the Act's requirement of parity. The lack of a standard interval leaves CLECs, who must obtain unbundled loops from BellSouth in order to compete fully, at substantial risk of having to accept loops within intervals that are longer than those in which BellSouth provides loops to itself. That risk is not merely hypothetical: BellSouth has indicated elsewhere that its target installation interval for 2-wire analog voice grade loops is five days. See Attach. 5 (Direct Testimony of Jerry W. Moore Before the North Carolina Utilities Commission, at Exhibit JWM-D (August 5, 1997)). For BellSouth retail customers, by contrast, same day or next day service is generally available. The effect of the longer interval for CLECs is clear: customers -- particularly customers initiating new service -- are less likely to sign up with a CLEC if it will take at least five days to begin service with the CLEC but only a day or two to begin service with BellSouth. There is no reason that furnishing loops to CLECs should be technically more difficult for BellSouth than furnishing loops to itself. Indeed, the only technical problem is the lack of fully implemented ordering systems discussed in Samuel King's declaration, which, in combination with BellSouth's unreasonable and discriminatory business rules and processes, leaves CLECs unable to assure their customers of rapid initiation of service. As a practical

matter, BellSouth can use the disparity in loop provisioning intervals as a marketing tool to induce customers to remain with BellSouth.

UNBUNDLED TRANSPORT (Checklist Item (v))

39. The unbundled transport offering in BellSouth's SGAT is deficient because it does not make local transport available as an unbundled element. Although the SGAT purports to offer "local transport from the trunk side of its switches unbundled from switching," SGAT § V.A., the SGAT does not offer trunk ports as part of its tandem switching and local switching network elements. See SGAT §§ V.A.3., VI.A. BellSouth cannot provide an unbundled transport network element when it does not provide a trunk port option because, without the availability of trunk ports, there is nothing for an unbundled transport element to connect to. Thus, unbundled transport has not truly been offered in the SGAT.

40. BellSouth also has failed to make a clear showing that it can provide unbundled local transport to CLECs in a timely and nondiscriminatory fashion. BellSouth has provided only ten dedicated local transport trunks to CLECs in South Carolina. Milner Aff. ¶ 47. And BellSouth is unable to quantify the shared transport trunks being provided to CLECs. Id. ¶ 48. Yet BellSouth concluded that no end-to-end testing of its systems for providing unbundled local transport would not be necessary, citing the purported similarity of unbundled transport to the transport components of special access services. Id. ¶ 49. BellSouth has not shown that it has the capability to provide unbundled transport as an unbundled network element in a commercial setting on terms and conditions that comply with the Act.

UNBUNDLED SWITCHING
(Checklist Item (vi))

41. BellSouth is not yet furnishing any CLEC with any unbundled switching functions or capabilities in South Carolina. Milner Aff. ¶ 50. BellSouth's SGAT describes in general terms the switching product that it plans to provide, but that alone gives no basis for concluding that it is capable today of providing that product. Mr. Milner points to no testing that BellSouth has done to demonstrate that its unbundled switching element is truly available, relying instead on the fact that BellSouth has provided twenty-one unbundled switch ports in other states in its region. See id. Again, however, the fact that BellSouth has provided unbundled switch ports, without more, does not answer the question of whether BellSouth can provide all features, functions, and capabilities of the switch on terms and conditions that comply with the Act.⁵ Mr. Milner makes no mention of the specific terms under which BellSouth has provided switch ports, and no such terms are set forth in the SGAT. In this regard, MCI has requested unbundled local switching from BellSouth, and MCI and BellSouth are in discussions about an unbundled local switching trial. Details remain to be worked out. In Florida, MCI's request for unbundled local switching resulted in BellSouth's insistence that MCI submit a BFR. Although MCI objected to the requirement of a BFR in order to obtain a basic network element that BellSouth is clearly obligated to provide, MCI submitted a BFR under protest on September 15, 1997, and is awaiting BellSouth's response to that BFR. MCI's experience only emphasizes that BellSouth is not

⁵For example, BellSouth has indicated in proceedings in Florida that it does not provide usage sensitive bill detail as part of its unbundled local switching element, including the detail needed for CLECs to bill access charges to IXCs, even though it acknowledges that information needed for billing is a feature, function, or capability of the switch. See Attach. 6 (Cross-Examination of Robert Scheye before the Florida Public Service Commission, Tr. at 566-67, 1717, 1720-23, 1744).

prepared to provide unbundled switching. BellSouth cannot be said to be offering unbundled switching until procedures have been documented, testing has been completed, and performance measures have been established, all showing that CLECs can rely on obtaining unbundled switching from BellSouth in a timely and effective manner.

**ACCESS TO 911/E911, DIRECTORY ASSISTANCE,
AND OPERATOR SERVICES
(Checklist Item (vii))**

42. As with most other checklist items, BellSouth does not adequately set forth in its SGAT the procedures that it will use to provide 911/E911, directory assistance services, and operator services as required by the Act. Relying on its assertions that unspecified “methods and procedures” for providing these services are already in place, BellSouth states repeatedly in the Milner affidavit that it was not necessary to perform end-to-end testing of the services required under this checklist item. See Milner Aff. ¶¶ 59, 61, 62, 63, 64, 65. Again, BellSouth points to a limited amount of actual experience, but does not show that the services it has provided were provided on terms and conditions that are both reasonable and nondiscriminatory. For example, BellSouth glosses over the fact that it has not provided CLECs with a complete copy of its directory assistance database that is at parity with the database available to BellSouth’s own directory assistance operators. This issue is discussed below in the section on dialing parity.

43. In addition, MCI has had difficulties with BellSouth dropping customers’ listings from the directory assistance database, white pages, and yellow pages following migration of the customer from BellSouth to MCI. BellSouth’s system calls for a migrated customer’s listings automatically to be deleted and to be restored only upon MCI’s specific request. The